SUPREME COURT OF THE UNITED STATES.

No. 14, Original.—October Term, 1925.

Commonwealth of Massachusetts, Plaintiff,
vs.
The State of New York; The City of Rochester; ...es L. Hotchkiss, Clerk of the County of M...roe, State of New York; Eugene Van V...his, John A. Vanderwerf and Charles C. Beahan as Commissioners of Appraisal; The New York Central Railroad Company; Ontario Beach Hotel & Amusement Company; Central Union Trust Company of New York; The Upton Company; Anna T. Granger; Emil Boshart; Rebecca Boshart; Bartholomay Brewing Company; Milton J. McIntyre; Belle McIntyre; Twentieth Ward Co-Operative Savings & Loan Association and The Farmers Loan & Trust Company, Defendants.

In Equity.

[April 12, 1926.]

Mr. Justice Stone delivered the opinion of the Court.

This is an original suit in equity brought by the Commonwealth of Massachusetts against the State of New York, the City of Rochester in New York, and certain corporations and individuals, to quiet title to land located in the City of Rochester, and to enjoin the City from taking it by eminent domain, or in the alternative, to have the amount of compensation for the taking determined by this Court. The case was heard upon bill and answer and the report of a Special Master appointed to take proofs and to make ... advisory report upon the questions of fact raised by the pleadi...gs, except as to the amount of damages to be paid for the property if taken by eminent domain.

The land in dispute is a narrow strip of about twenty-five acres fronting upon Lake Ontario within the city limits of Rochester.

By the Treaty of Hartford, entered into between New York and Massachusetts, December 16, 1786, land within the territorial limits of New York was granted to Massachusetts in private ownership. The title to the land in controversy depends upon the meaning and effect of this treaty, and upon the construction of a subsequent conveyance by Massachusetts of a part of the land thus acquired, through which conveyance the several defendants other than the State of New York derive their title.

Before 1786 Massachusetts and New York claimed, under conflicting royal grants, both sovereignty and title of a large area of what is now western New York. The controversy was settled by the Treaty of Hartford by which Massachusetts gave up all its claim to sovereignty over the territory, and its claim to private ownership in part of it, and New York ceded to Massachusetts:

"the Right of pre-emption of the Soil from the native Indians and all other the Estate, Right, Title and Property (the Right and Title of Government Sovereignty and Jurisdiction excepted) which the State of New York hath . . . in or to all the Lands and Territories within the following Limits and Bounds that is to say, BEGINNING in the north boundary Line of the State of Pennsylvania in the parallel of forty-two degrees of north Latitude at a point distant eighty-two miles west from the north east Corner of the state of Pennsylvania on Delaware River as the said boundary Line hath been run and marked by the Commissioners appointed by the States of Pennsylvania and New York respectively and from the said Point or Place of beginning running on a due meridian north to the boundary Line between the United States of America and the king of Great Britain thence westerly and southerly along the said boundary Line to a meridian which will pass one mile due East from the northern Termination of the Streight or waters between Lake Ontario and Lake Erie thence South along the said Meridian to the South Shore of Lake Ontario thence on the eastern side of the said Streight by a Line always one mile distant from and parallel to the said Streight to Lake Erie thence due west to the boundary Line between the United States and the king of Great Britain thence along the said boundary Line until it meets with the Line of Cession from the State of New York to the United States thence along the said Line of Cession to the northwest corner of the State of Pennsylvania and thence East along the northern boundary Line of the State of Pennsylvania to the said place of beginning."

Article 10 of the Treaty provided that Massachusetts might grant the right of pre-emption in the lands thus acquired, "to any person or persons who by virtue of such Grant shall have good

right to extinguish by purchase the claims of the native Indians," by compliance with certain conditions not now important.

By act of the Massachusetts legislature, approved April 1, 1788 (Laws & Res. 1786-7, c. 135, p. 900), it was provided that "this Commonwealth doth hereby agree, to grant, sell & convey" to Oliver Phelps and Nathaniel Gorham for a purchase price stated in the Act "all the Right, Title & Demand, which the said Commonwealth has in & to the said Western Territory" ceded to it by the Treaty of Hartford. On July 8, 1788 the Five Indian Nations (Mohawks, Oneidas, Onandagas, Cayugas and Senecas) executed a deed or treaty extinguishing the Indian claim to the territory described in it and conveying that territory to Phelps and Gorham. The description embraces approximately the east one-third of the territory ceded to Massachusetts by the Treaty of Hartford, and begins at a point "in the north boundary line of the State of Pennsylvania in the parallel of forty-two degrees north latitude at a point distant eighty-two miles west from the northeast corner of Pennsylvania on Delaware river." The description proceeds by various metes and bounds to a point on the Genesee River from which, so far as now material, it reads as follows:

" . . . thence running in a direction due west twelve miles, thence running in a direction northwardly, so as to be twelve miles distant from the most westward bends of said Genesee River to the shore of the Ontario Lake thence eastwardly along the shores of said Lake to a meridian which will pass through the first point or place of beginning. . . ."

By legislative act (Laws & Res. 1788-9, c. 23, p. 35), approved November 21, 1788, the Commonwealth of Massachusetts granted to Phelps and Gorham the land which had been conveyed by the deed or treaty with the Five Tribes, the description of the land conveyed being, so far as it is now material, identical with that in the conveyance from the Five Tribes, which we have quoted. By treaty between the Six Nations and the United States, executed November 11, 1794, known as the Pickering Treaty, 7 Stat. 44, the Indians formally disclaimed any rights in the land lying east of the west line of the Phelps and Gorham tract.

The several corporate and individual defendants who are in possession of or claim an interest in land now in controversy, derive their title, through mesne conveyances, from Phelps and Gorham, who took under the grants last described, from the Five Tribes and

from the Commonwealth of Massachusetts; and Massachusetts is not entitled to relief in this suit unless title in the *locus quo* was acquired by it by the Treaty of Hartford and remained in it after its grant to Phelps and Gorham.

After the Act approved November 21, 1788, Phelps and Gorham having failed to pay the purchase price stipulated in the Resolve of April 1, 1788, a settlement of the contract or agreement between them and the Commonwealth of Massachusetts was effected. By this they retained the easterly one-third of the lands which had been released and confirmed to them by the Five Tribes and later conveyed to them by the Commonwealth of Massachusetts, and they released and quit-claimed to the Commonwealth all their right and title in the remainder of the land.

It is established that since the grant to Phelps and Gorham, there has been a shifting of the shore line of Lake Ontario, and that the land now in dispute, which certainly in 1803 and probably at the time of the Phelps and Gorham grant, was under water, north of the shore line of Lake Ontario, is now above water and south of the high water mark of the lake. Whether the change in the shore line and in the physical condition of the land in question was due wholly to accretion or partly to accretion and partly to filling, does not clearly appear, and in the view we take of the case, is not material.

The argument of the Commonwealth of Massachusetts is that the legal effect of the Hartford treaty was to release and convey to Massachusetts within the limits of the description in the grant, the bed of Lake Ontario as it then existed; and that by the treaty it acquired title to the land now in dispute; that its grant to Phelps and Gorham, bounding the land conveyed by a line running "to the Shore of the Ontario Lake; thence eastwardly along the Shores of the said Lake", carried only to high water mark, and that title to all the land below high water mark as it then existed remained in Massachusetts. Even though this contention that the bed of the lake vested in Massachusetts be decided against it, Massachusetts nevertheless takes the position that the land in dispute was due to accretion, and that all the benefits of the accretion accrued to Massachusetts, because it did acquire title to the shore of the lake by the Treaty of Hartford, and did not part with the title to the shore by its grant to Phelps and Gorham.

The first question which must receive our consideration is whether Massachusetts acquired any title to the bed of Lake Ontario by the Treaty of Hartford. That treaty contained three principal clauses of cession. One granted to New York "all the claim right and Title which the Commonwealth of Massachusetts hath to the Government Sovereignty and Jurisdiction" in all the lands in controversy between the two States. The second granted to Massachusetts "the right of pre-emption of the soil from the native Indians and all other the estate, right, title and property (the right and title of government, sovereignty and jurisdiction excepted)" of the State of New York in that part of the land, the description of which has already been set forth in detail, and which included that part of the bed of the lake lying within the east and west boundaries of the tract ceded, and south of the international boundary. By the third, with which we are not now concerned, Massachusetts gave up and ceded to New York its claim to private ownership in the remainder of the land in controversy.

The English possessions in America were claimed by right of discovery. The rights of property and dominion in the lands discovered by those acting under royal authority were held to vest in the Crown, which under the principles of the British Constitution was deemed to hold them as a part of the public domain for the benefit of the nation. Upon these principles rest the various English royal charters and grants of territory on the Continent of North America. *Johnson* v. *McIntosh*, 8 Wheat. 543, 577 *et seq.*, 595. As a result of the Revolution, the people of each State became sovereign and in that capacity acquired the rights of the Crown in the public domain (*Martin* v. *Waddell*, 16 Peters 367, 410) and it was by the exercise of their sovereign power as States that New York and Massachusetts undertook to make disposition of a portion of their public domain by the grants contained in the Treaty of Hartford.

The effect of the grant made to Massachusetts in the treaty, so far as concerns the question now presented, depends upon the interpretation of the restrictive language excepting from the operation of the grant the "right and Title of Government Sovereignty and Jurisdiction" of New York, and of the co-temporaneous grant by Massachusetts to New York of "all the claim right and Title which the Commonwealth of Massachusetts hath to the Government Sovereignty and Jurisdiction" over all the lands in con-

troversy. We have to decide whether the grant and reservation to New York of sovereign rights vested or reserved in New York the title to the bed of the navigable waters lying within the exterior limits of the grant made by it to Massachusetts in the same instrument.

The question is not the vexed one argued at the bar whether there was power in New York to grant the soil beneath its navigable waters in private ownership. Compare *Martin* v. *Waddell, supra*, p. 410. We need not consider here whether, in such circumstances, there is a limitation on the power of a sovereign state to grant its public domain, nor the nature and extent of the limitation if it exists, for in our view the meaning of the grant itself determines the principal question which we have to decide.

In ascertaining that meaning, not only must regard be had to the technical significance of the words used in the grants, but they must be interpreted "with a view to public convenience, and the avoidance of controversy," and "the great object, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals". Marshall, C. J., in *Handly's Lessee* v. *Anthony*, 5 Wheat. 374, 383-4. The applicable principles of English law then well understood, the object of the grant, contemporaneous construction of it and usage under it for more than a century, all are to be given consideration and weight. *Martin* v. *Waddell, supra.*

The grant made by New York to Massachusetts embraced a vast domain extending more than one hundred and forty miles from east to west, and from the northern boundary of Pennsylvania to the Canadian line, comprising about six million acres of land, largely an unsettled wilderness inhabited by Indians, to which the navigable waters of Lake Ontario were the principal means of access. The purpose of it was, while reserving and securing to New York its rights as a sovereign State in the granted territory, to confer upon Massachusetts the right of pre-emption of the soil from the Indians, and to enable it to make sale of the lands to settlers by conferring on it the power to grant this right of pre-emption.

It does not appear that the Indians ever had or claimed any rights to the soil under the lake or that any attempt was made by Massachusetts or those claiming under it to exercise the granted

right of pre-emption with respect to the bed of the lake. Nor is there anything to indicate that either party to the treaty contemplated grants of the soil under the water, or intended any such limitation upon the sovereign rights of New York over navigable waters within its territory, as necessarily would have resulted from the grant in private ownership of lands under water.

It would be difficult to suggest any purpose which the high contracting parties could have had in mind which would have been furthered by a grant to Massachusetts of a fee in the bed of the lake. The right of Massachusetts and her grantees to use the waters of the lake was amply secured and protected by a clause of the treaty, which provided that "Citizens of the Commonwealth of Massachusetts shall . . . at all times hereafter have and enjoy the same and equal Rights respecting the navigation and fishery on and in Lake Ontario and Lake Erie and the Waters communicating from, one to the other . . . as shall from time to time be had and enjoyed by the Citizens of the State of New York. . . ."

On the other hand, a grant of the soil under water in private ownership would have set material limits on the free exercise of the sovereign control of New York over the navigable waters of the State and on the free use of the principal waterway of the newly settled territory. All these considerations lead to the conclusion that the grants in the Treaty of Hartford did not convey to Massachusetts, which took in private ownership, any title in the bed of the lake, unless the technical language employed in the grants compels us to take an opposite view.

The fact that the northern limit of the grant to Massachusetts was described as the international boundary, and not the edge of the lake, is not inconsistent with our view of the general purpose of the grant with respect to the lands under water. A map in evidence antedating the treaty shows numerous islands in Lake Ontario within the described area. It was unquestionably the purpose to grant the right of pre-emption of all the islands and, in order to include them, it was necessary to extend the description to the international boundary line. Moreover, it was the avowed purpose of the treaty to settle all controversies with respect to the area described, and these included conflicting claims of sovereignty as well as disputes with respect to proprietary rights. It was necessary, therefore, to make the international boundary a descriptive term

in the grants and reservations whereby sovereignty and jurisdiction over the entire tract were being adjusted.

It is a principle derived from the English common law and firmly established in this country that the title to the soil under navigable waters is in the sovereign, except so far as private rights in it have been acquired by express grant or prescription. *Shively* v. *Bowlby*, 152 U. S. 1. The rule is applied both to the territory of the United States (*Shively* v. *Bowlby, supra*) and to land within the confines of the States whether they are original States (*Johnson* v. *McIntosh, supra; Martin* v. *Waddell, supra*) or States admitted into the Union since the adoption of the Constitution. (*United States* v. *Holt State Bank*, — U. S. —.) The dominion over navigable waters and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged, in construing all grants by the sovereign, of lands to be held in private ownership. (*Martin* v. *Waddell; Shively* v. *Bowlby, supra.*) Such grants are peculiarly subject to the rule, applicable generally, that all grants by or to a sovereign government as distinguished from private grants, must be construed so as to diminish the public rights of the sovereign only so far as is made necessary by an unavoidable construction. *Charles River Bridge* v. *Warren Bridge*, 11 Peters, 420, 544-548; *Shively* v. *Bowlby, supra.* It follows that wherever there is a grant by a state having plenary power to make it, of the rights and title of government and sovereignty over a specified territory, or where, in a grant of land to be held in private ownership by one State within the limits of another, there is a reservation to the grantor State of these sovereign rights, the grant or reservation carries with it, as an incident, title to lands under navigable waters.

The precise question now under consideration was before this court in *Martin* v. *Waddell, supra.* That case involved the title to lands under tidal waters within the territorial limits of New Jersey, which were embraced within the territory granted by royal charters to the Duke of York. By successive conveyances, these lands had been transferred to twenty-four individuals, the Proprietors of East New Jersey, who were invested with the plenary rights and powers of government and ownership which had been conferred on the Duke of York by the original grants. In 1702 by formal instrument, the Proprietors surrendered to the Crown all

their rights and powers of government, retaining their rights of private property in the granted territory.

It was held, in an opinion by Chief Justice Taney, that the relinquishment by the Proprietors to the Crown, of the rights and powers of government vested in them, carried with it as an incident the title to land under tidal waters; that that title and ownership had passed to the State of New Jersey as an incident to its sovereignty over the territory embraced in the royal grants, and excluded all claims of title to lands under navigable waters by those claiming under grants by the Proprietors. The reasoning of the opinion was addressed wholly to the proper interpretation to be placed upon grants or reservations of rights of sovereignty with respect to their operation to transfer title of lands under navigable waters; and it is decisive of this case. It compels the conclusion, which is supported by every consideration that could throw light upon the purpose and intent of the Treaty of Hartford, that the proper construction of the technical language of the treaty (which both granted and reserved to New York the right and title of sovereignty and jurisdiction over the area described) gave to New York, as incident to its sovereignty, title to all lands under navigable waters. See *Pollard's Lessees* v. *Hagan*, 3 How. 212; *Coxe* v. *State*, 144 N. Y. 396, 406.

We pass now to the contention of Massachusetts that even if it did not acquire title to the bed of the lake, it did acquire title to the shore of the lake by the Treaty of Hartford, and that it is entitled to the benefit of all accretion to the shore because it has never parted with its title. This contention depends upon the interpretation of the language of its grant to Phelps and Gorham, of lands bounded by a line described as extending "to the Shore of the Ontario Lake; thence eastwardly along the Shores of the said Lake"; and it can be sustained only if we conclude that notwithstanding the nature of the grant and the circumstances under which it was made, Massachusetts, after its execution, retained a narrow and undefined ribbon of land extending some forty miles along the lake front, north of the Phelps and Gorham grant, and separating the latter from the lake.

That grant embraced more than two million acres of unsettled land, for the development of which access to the lake was essential. It was made pursuant to the agreement of 1787 between Massachusetts and Phelps and Gorham to convey to them *all* of the

property which Massachusetts had acquired under the Treaty of Hartford and pursuant to the Treaty of the Five Nations with Phelps and Gorham of July 8, 1788, purporting to extinguish the Indian claims to "All that territory or Country of land lying within the State of New York contained within & being parcel of the lands and territory, the right of pre-emption of the soil whereof from the native Indians was ceded by the State of New York" to Massachusetts by the Treaty of Hartford. There is no conceivable purpose for which it could be supposed that Massachusetts intended to retain such a proprietary interest in the shore as is now claimed, or to deny to its grantees and to settlers in the granted territory access to the great natural waterway upon its northern boundary. We are not dealing here with the disposition of the *jus publicum* but with land held by Massachusetts in private ownership and granted by it to private persons. See *Georgia* v. *Chattanooga*, 264 U. S. 472. It would require clear and unequivocal language so to limit the obvious general purpose and effect of the grant.

In order thus to restrict its operation, Massachusetts relies on the use of the words "to the Shore" and "along the Shores", instead of "to the lake" and "along the lake", which concededly would have carried to the water's edge; and it is argued that the same effect must be given to these words as when they are used in conveyances granting land bounded by the shore of tidal waters. In this connection, it should be observed that in the Treaty of Hartford the words "shore" and "lake" were used synonymously, their choice being determined by convenience of expression. For example, the western boundary in the treaty was described as running from the international boundary line in the middle of Lake Ontario "to the South Shore of Lake Ontario" and thence continuing south "to Lake Erie". In each instance it is clear that the margin of the Lake was intended, and it was not meant by the particular use of these phrases to exclude "the shore" from the grant.

The "seashore" is that well defined area lying between high water mark and the low water mark, of waters in which the tide daily ebbs and flows. The fact that by the English common law, and by the law of those States bounded by tidal waters, the public has rights in the seashore, and that grants extending only to the high water mark of such waters nevertheless give access to the sea,

accounts for the rule, generally recognized and followed, that a grant whose boundaries extend to the "shore" or "along the shore" of the sea, carries only to high water mark. *Howard* v. *Ingersoll,* 13 How. 381; *Storer* v. *Freeman,* 6 Mass. 435; *Shively* v. *Bowlby, supra; Kean* v. *Stetson,* 5 Pick. 492; *Cortelyou* v. *VanBrundt,* 2 Johns. 357. But the word "shore" even in its application to tidal waters is subject to construction by the terms of the deed and surrounding circumstances, and may mean the water's edge at low water mark; *Storer* v. *Freeman, supra; Hathaway* v. *Wilson,* 123 Mass. 359; *Haskell* v. *Friend,* 196 Mass. 198.

The application of that rule to conveyances of land bordering upon non-tidal waters is supported by neither reason nor authority. The lack of clear definition, by natural land marks, of the shore of non-tidal waters, would make its application impracticable. It would deny to grantees all access to such waters except on the irregular and infrequent occasions of flood, since there are no public rights in the shores of non-tidal waters, and the abutting owner could not cross the shore to the water without trespass. Such a result would contravene public policy and defeat the intention with which such conveyances are normally made. New York has consistently refused to apply the rule to non-tidal waters, holding that a conveyance "to the shore" or "along the shore" of such waters carries to the water's edge at low water, *Child* v. *Starr,* 4 Hill. 369, 375-6; *Halsey* v. *McCormick,* 13 N. Y. 296; *Yates* v. *Van De Bogert,* 56 N. Y. 526; *Stewart* v. *Turney,* 237 N. Y. 117, 131, and the local rules for interpreting conveyances should be applied by this Court in the absence of an expression of a different purpose. *Hardin* v. *Jordan,* 140 U. S. 371, 384; *Oklahoma* v. *Texas,* 258 U. S. 574, 594; *Brewer Oil Co.* v. *United States,* 260 U. S. 77. 88. The same rule is, however, generally followed elsewhere. See *Castle* v. *Elder,* 57 Minn, 289; *Lamb* v. *Rickets,* 11 Ohio 311; *Daniels* v. *Cheshire R. R.,* 20 N. H. 85; *Kanouse* v. *Stockbower,* 48 N. J. Eq. 42, 50; *Seaman* v. *Smith,* 24 Ill. 521; *Slauson* v. *Goodrich Transp. Co.,* 94 Wis. 642; *Burke* v. *Niles,* 13 New Bruns. 166; *Stover* v. *Lavoia,* 8 Ont. W. R. 398.

Upon neither of the theories advanced, therefore, does the Commonwealth of Massachusetts sustain its claim to the land in question.

If any further support were required for the conclusion which we reach, it is to be found in the practical construction by the

two States of the Treaty of Hartford and of the grants made by Massachusetts immediately following it, and in long continued acquiescence by Massachusetts in that construction. After the relinquishment by Phelps and Gorham to Massachusetts, of all claim to the westerly two-thirds of the land acquired by Massachusetts under the Treaty of Hartford, Massachusetts, by resolution of its legislature of March 8, 1791 (Laws & Res. 1790-1, c. 121, p. 221) bargained to sell to Samuel Ogden all the title and interest which the Commonwealth then had in the land granted to it by the State of New York, except such parts of the land as then belonged to Phelps and Gorham. Robert Morris succeeded to such rights as Ogden had under this contract. Five several conveyances to Morris, embracing the westerly two-thirds of the tract, were made by a Committee appointed for that purpose, and the report of the Committee, describing these conveyances in detail, was approved by Resolution of the Massachusetts Legislature of June 17, 1791 (Laws & Res. 1790-1, c. 65, p. 416). This resolution recited that the Committee had been appointed with authority "to sell & convey . . . the right of pre-emption, & other the title & interest of the Commonwealth to that part of the lands lying in the State of *New-York*, the right of pre-emption whereof the said State of *New-York* had ceded to this Commonwealth, & which had not been by them before otherwise ceded or granted". Although the descriptions in the deeds were so drawn as to exclude from their operation any lands lying east of the western bounds of the Phelps and Gorham grant, this resolution was a clear recognition by the Massachusetts legislature, (as were also the recitals in the several deeds by this Committee to Morris), that Massachusetts retained no interest in the shore or in the bed of Lake Ontario east of the westerly boundary of the Phelps and Gorham grant. The deed of the most easterly land conveyed to Robert Morris describes it as bounded on the north by the international boundary line and on the east by lands "confirmed to Nathaniel Gorham and Oliver Phelps", but makes no mention of any land on the east belonging to Massachusetts, as would have been appropriate if it had retained any interest in the shore line, east of the land granted to Morris.

In 1797 Morris obtained from the Indians a grant of their right to all such part of the lands ceded by New York to Massachusetts "as is not included in the Indian purchase made by Oliver Phelps

and Nathaniel Gorham," and in a Resolve of the Massachusetts legislature passed March 8, 1804 (Laws & Res. 1803-4, c. 155, p. 939), this Treaty of Morris with the Indians is referred to as having been made with the authority of Massachusetts and as having extinguished all the Indian rights in the land referred to.

There is no evidence of any official act or any expression of the general court or the legislature of Massachusetts or of any official of the Commonwealth from the time of the Phelps and Gorham grant until the commencement of the present suit, which suggests that Massachusetts had reserved or retained any interest whatever in land under Lake Ontario or upon its shores within the boundaries of that grant. So far as appears, the public authorities of New York have continuously treated the property as other property in the State and as not encumbered by any claim or title of the Commonwealth of Massachusetts.

Long acquiescence in the possession of territory and the exercise of dominion and sovereignty over it may have a controlling effect in the determination of a disputed boundary. *Indiana* v. *Kentucky*, 136 U. S. 479; *Michigan* v. *Wisconsin*, — U. S. —. Even though the Treaty of Hartford provided "that no adverse possession of the said lands for any length of time shall be adjudged a disseisin of the Commonwealth of Massachusetts," it does not affect the interpretation by Massachusetts of her own deeds and acts, or her long continued acquiescence in that interpretation as persuasive, if not conclusive, evidence of the correctness of the construction which we place upon the deeds themselves.

The complainant has failed to sustain its claim of title to the land in question. The decree will therefore be for the defendants, and since no public boundary or public ownership was involved, costs are awarded against the complainant. The parties, or either of them if so advised, may, within thirty days, submit the form of a decree to carry this opinion into effect; failing which a decree dismissing the bill, with costs to the defendants, will be entered.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.